IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4434 OF 2004
AND
CRIMINAL APPLICATION NO.4436 OF 2004
IN
CRIMINAL APPEAL NO.776 OF 2004

Anthony Dennis Lobo ...Applicant

V/s

State of Maharashtra ...Respondent

Mr. A.L. Shaikh for the applicant.

Mr. R.Y. Mirza, APP for the respondent - State.

CORAM: V.M. KANADE, J.
DATE : 5TH NOVEMBER, 2004.

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the respondent State. . Heard the learned Counsel appearing on behalf of the appellant and the learned APP for the respondent - State.

2. Applicant is convicted under section 392 read with section 397 of the Indian Penal Code and is sentenced to suffer R.I. for 7 years. It is submitted by the learned Counsel appearing on behalf of the applicant that on the date of the incident i.e. on 27/11/1995, applicant was about 16 years of age. He has annexed the School Leaving Certificate of the accused which

shows that the date of birth of the applicant was 21/1/1979. Time was given to Shri Adsule, the learned APP appearing on behalf of the State to take instructions. However, he is not present in Court today. With the assistance of Shri Mirza, the learned APP appearing on behalf of the State, I have perused the order passed by the Trial Court. Law on the point is quite well settled. Under section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile cannot be tried by the regular court and if a plea is raised even for the first time in the High Court or the Apex Court, such a plea has to be entertained and considered. This Court in the case of **State of Maharashtra Vs. Jagdish @ Sagar Chaudhari & Ors** reported in **2004(2) ALL MR 28** has held that the date of commission of the offence is the relevant date for the purpose of applicability of the provisions of the Act. The death penalty which was imposed on the accused was quashed and set aside. The Division Bench of this Court while passing the said order took into consideration judgment of the Apex Court in the case of **Umesh Chandra Vs. State of Rajasthan**, reported in **1982 SCC (Cri) 396** and other subsequent judgments.

3. In my view, this is a fit case for grant of bail.

Applicant was on bail during trial. Applicant to be released on bail on same terms and conditions as imposed by the Trial Court. He shall however, execute fresh bond. He shall report to the concerned Police Station twice in a month.

4. In the peculiar facts and circumstances of the case, applicant is permitted to lead an additional evidence in this Court. Applicant to lead an additional evidence at the time of final hearing of the Criminal Appeal.

5. Both the applications are accordingly disposed of.

V.M. KANADE, J.